IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

(1)S.B.Criminal Revision Petition No.744/2003
Sanjay Kumar Modi Vs. State of Rajasthan & Anr.)

(2)S.B.Criminal Revision Petition No.745/2003
Sanjay Kumar Modi Vs. State of Rajasthan & Anr.)

(3)S.B.Criminal Revision Petition No.746/2003
Sanjay Kumar Modi Vs. State of Rajasthan & Anr.)

against the Order dated 11.7.2003 passed by Judicial Magistrate, Bikaner, in Criminal Cases No. 75/02, 76/02 & 77/02.

Date of Order : 02/06/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. M.K.Garg for the petitioner.
Mr. K.L.Thakur, Additional Advocate General for non-petitioners.

BY THE COURT:-

These three criminal revisions under Section 397/401 Cr.P.C., are directed against the order dated 11.7.2003 passed by Judicial Magistrate, Bikaner (for short 'the trial court' hereinafter) in Criminal Cases No.75/02, 76/02 and 77/02 respectively, whereby the trial court framed the charges against the petitioner in all the three cases for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act'

hereinafter) and under Sections 420, 120-B IPC. Since all the three revision petitions involve common question of facts and law and by the same party, therefore, with the consent of learned counsel for the parties, they are heard together and decided.

It is contended by learned counsel for the petitioner that when an offence under Section 138 of the Act is made out then no offence under Sections 420 and 120-B IPC are made out, therefore, the court below fell in error in framing charges for the offences under Sections 420 and 120-B IPC.

Learned Additional Advocate General appearing for the non-petitioners supported the judgment and order impugned and contended that on account of dishonour of cheque not only the proceedings under Section 138 of the Act, but if the averments in the complaint show dishonest intention on the part of the accused as also criminal conspiracy, then apart from the offence under Section 138 of the Act, the offences under Sections 420 and 120-B IPC are prima-facie made out and the trial court noticing enough material came to the conclusion that there is ground to presume that the petitioner committed the offence under Section 138 of the Act as also offences under Sections 420 and 120-B IPC. Learned Additional Advocate

General has relied on Full Bench decision of Andhra Pradesh High Court in M/s. OPTS Marketing Pvt. Ltd. Vs. State of A.P. (FB) 2001 Cri. L.J. 1489, in Smt. Sosamma Vs. Rajendran and Others 1993 Cri. L.J. 2196 and a decision of this Court in Vishnu Purohit Vs. State of Rajasthan 2005 (2) R.Cr.D. 76 (Raj.).

The Full Bench of Andhra Pradesh High Court in M/s. OPTS Marketing Pvt. Ltd. Vs. State of A.P.(Supra) has held that even after introduction of S.138 of the Negotiable Instruments Act, prosecution under S. 420 IPC is maintainable in case of dishonour of cheques or postdated cheques issued towards payment of price of the goods purchased or hand loan taken, or in discharge of an antecedent debt or towards payment of goods supplied earlier, if the charge sheet contains an allegation that the accused had dishonest intention not to pay even at the time of issuance of the cheque, and the act of issuing the cheque, which was dishonoured, caused damage to his mind, body or reputation. Private complaint or FIR alleging offence under S.420 IPC for dishonour of cheques or postdated cheques cannot be quashed under S.482 Cr.P.C., if the averments in the complaint show that the accused had, with a dishonest intention and to cause damage to his mind, body or reputation, issued the cheque which was not honoured.

In Smt. Sosamma Vs. Rajendran and others (supra),

Kerala High Court while rejecting the contention that the complaint under Section 138 of the Act and Section 420 IPC both is not maintainable has held that a single transaction could spell out more than one offence and in that event such offences can be the basis of a complaint. As to whether the allegations as regards the commission of the offences are true, inclusive of the question regarding the genuineness of the cheque are matters which the complainant has to establish at trial. Such disputed question of fact cannot be gone into in a matter under S.482 Cr.P.C.

In Vishnu Purohit Vs. State of Rajasthan (Supra), I have held that to rope an accused for cheating due to cheque drawn and issued by him and later bounced on account of closure of account, initial dishonest intention at the time of issuing of cheque is sine qua non. In a case of dishonour of cheque, for constituting an offence under Sec. 420 IPC, it is essential that there must be an element of deception in the transaction. To deceive is to induce a man to believe that a thing is true which is actually false and which person practising the deceit knows or believes to be false. It must also be shown that there exists a fraudulent and dishonest intention at the time of commission of the offence. In the instant case, the petitioner, knowing well that he is neither a doctor nor having a blood bank licence and the laboratory building, dishonestly and fraudulently

induced the respondent-complainant to advance him a loan against a post-dated cheque well knowing that there appears hardly any amount and if at all any amount was there by closing the account, the petitioner brought the amount of balance to nil. Thus, prima-facie, the element of deceiving the complainant exists from the case as set up by the complainant.

The controversy involved in the instant case is squarely covered by the decisions referred herein above. From the complaint and statement of witnesses produced by the complainant, there is a prima-facie, evidence that at the time of entering into transaction, the petitioner fraudulently and with dishonest intention, in order to deceive the complainant non-petitioner, induced him to part with property i.e. 25% of amount of transaction. Thus, there exist sufficient ground to presume that the petitioner committed the said offences.

In the circumstances, therefore, I do not find any error, illegality or perversity in the order impugned framing charge. All the three revision petitions are accordingly dismissed. Stay petitions No.375/03, 376/03 and 377/03 also stand dismissed.

(H.R.PANWAR),J.

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